

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAROLINA SHIPPING LTD.,	:	
	:	
Plaintiff,	:	08 CV 4711 (BSJ)
	:	ECF CASE
- against -	:	
	:	
RENAISSANCE INSURANCE GROUP LTD.,	:	
	:	
Defendant.	:	
-----X		

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S  
MOTION FOR A STAY PENDING APPEAL**

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*Attorneys for Plaintiff  
Carolina Shipping Ltd.*

Lauren C. Tisdale, Esq.  
Thomas L. Tisdale, Esq.

**PRELIMINARY STATEMENT**

Plaintiff CAROLINA SHIPPING LTD. (hereinafter “Carolina” or “Plaintiff”) submits this Reply Memorandum of Law in response to Memorandum of Law submitted by Defendant Renaissance Insurance Group Limited (“Renaissance” or “Defendant”) and in further support of Plaintiff’s Motion to Stay the Execution of Judgment dated June 10, 2008 pursuant to Fed. R. Civ. P. 62(c) and the Court’s inherent power to stay matters before it. The facts in support of the motion are set forth in the previously filed Declaration of Thomas L. Tisdale (“Tisdale Decl.”) dated June 23, 2008, and exhibits attached thereto, to which the Court is respectfully referred. Based upon the following and the Plaintiff’s previously filed Memorandum of Law in Support of its Motion to Stay, Plaintiff respectfully requests that the court grant Plaintiff’s motion.

**ARGUMENT**

**POINT I**

**DEFENDANT HAS FAILED TO ADDRESS THE “SLIDING SCALE”, AND HAS  
RELIED UPON A TEST WHICH IS NO LONGER VALID**

Defendant’s opposition to Plaintiff’s Motion looks nearly identical to the Memorandum of Law filed with, and rejected by, the United States Court of Appeals for the Second Circuit in *Centauri Shipping Ltd v. Western Bulk Carriers*, (see, Tisdale Decl. Ex. 3). There, as here, the Plaintiffs established the elements necessary for a stay pending appeal.

Motions to stay pending appeal, whether made before the Court of Appeals or the District Court, rely upon the same factors. See, *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Since this Court relied heavily upon the District Court’s decision in *Centauri* in vacating the attachment herein, and further, since the Second Circuit has voiced its opinion that there is a substantial likelihood that it will overturn the District Court decision in *Centauri*, and finally,

since the questions presented in the *Centauri* appeal are identical to those raised in this appeal, this court should also stay the judgment pending the appeal.<sup>1</sup>

Defendant's Opposition, while addressing the elements necessary for a stay, fails to mention that a "sliding scale" exists in weighing the necessary level or degree in assessing each of these factors. See *United States v. Visa U.S.A.*, 2007 U.S. Dist. LEXIS 58018 (August 8, 2007). Unlike any case cited by Defendant, the Court of Appeals has already signaled its intentions with an appeal on the identical issue. Under such circumstances, the level of evidence necessary to prove the other factors considered in a motion to stay can and should be reduced. See, *Thapa v. Gonzales*, 460 F. 3d 323,334 (2d Cir. 2006).

Moreover, Defendant relies upon the "needs" analysis rejected by the Second Circuit Court of Appeals to establish the purported lack of harm, arguing without promise or assurance of any kind, that the defendant is a substantial company that will be around when the judgment needs to be enforced or when the court orders the return of the release property. Defendant's reliance on the District Court decisions in *Aqua Stoli* and *Allied Maritime v. Rice Company*, 2004 U.S. Dist. LEXIS 20353 (SDNY 2004) is misplaced. Contrary to the statement in the Defendant's Opposition Brief, the Court of Appeals in *Aqua Stoli v Shipping Ltd. v. Gardner Smith Pty Ltd*, 460 F. 3d 434 (2d Cir. 2006) specifically rejected the "needs" analysis. *Aqua Stoli* was overruled on these grounds, not "on other grounds" as Defendant's citation indicates. The same rationale exists here.<sup>2</sup>

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<sup>1</sup> This Court should also keep in mind that, unlike all of the cases cited concerning stays pending appeal, this stay will most probably be in effect for a shorter period since the *Centauri* appeal will, in all likelihood, be dispositive of the appeal in this case, and will dispose of the matter more quickly.

<sup>2</sup> It is also interesting to note that, while Defendant's counsel stated he would ask his client to "promise" to maintain its registry with the Secretary of State for the State of New York as a foreign corporation authorized to do business, no such undertaking or promise is contained in Defendant's Opposition to Plaintiff's Motion for a Stay.

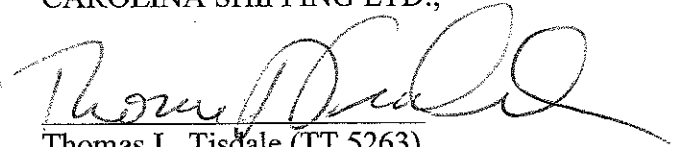
**CONCLUSION**

Carolina respectfully requests the Court to enter an order that stays the Vacatur Order in all respects pending the Second Circuit's decision on the appeal, and grants such other and further relief as the Court sees fit herein.

Dated: June 26, 2008  
New York, New York

The Plaintiff,  
CAROLINA SHIPPING LTD.,

By:



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**AFFIRMATION OF SERVICE**

Thomas L. Tisdale, an attorney duly admitted to practice before this Honorable Court, affirms on this 23<sup>rd</sup> day of June 2008, I served true copies of the foregoing, by U.S. mail, first class, postage pre-paid, and by email to:

unger@freehill.com

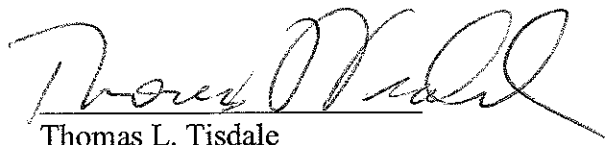
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By:

  
Thomas L. Tisdale